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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,997	02/28/2005	Kerstin Feldmann	2002P00982WOUS	2536

46726 7590 12/02/2008
BSH HOME APPLIANCES CORPORATION
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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/525,997	Applicant(s) FELDMANN ET AL.	
	Examiner Carl D. Price	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/27/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 and 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims **16-19** and **21-36** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has requested the examiner reconsider the rejection of claims 16-19 and 21-26. In addition applicant has presented new claims 27-36 for consideration.

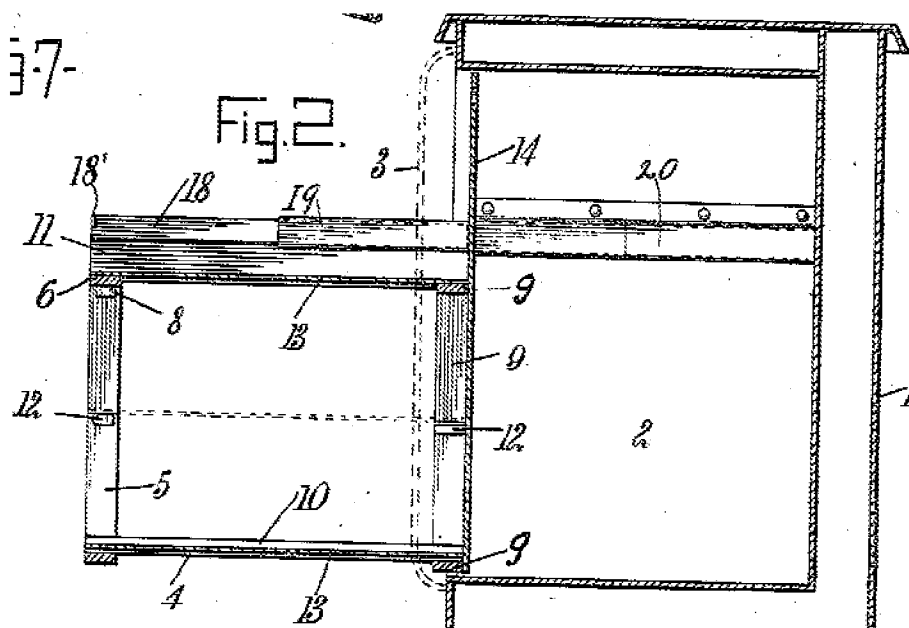
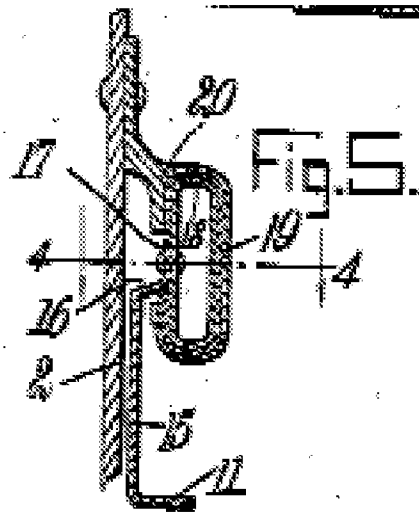
With regard to claims 16-19 and 21-36 and the prior art of record, applicant argues the following:

“None of the cited prior art references teach or disclose the feature of the holding part (12) which is guided on a guide rail 18 in a manner such that the holding part (12) by its own structure remains vertically oriented. In other words, the holding part (12) of the present invention is self-supporting for receiving a baking rack (24). For example, Figure 3 of the present application shows a first variant of a guide of the carriage 16 on the guide rails 18 such that the holding part (12) is self-supporting and Figure 5 of the present application shows another self-supporting structure. In contrast, Weiskittel US Patent No. 2,130,167 discloses that its holding members 30 are rigidly attached to and supported by the sliding support 18, as shown in Figure 3 of Weiskittel US Patent No. 2,130,167. Thus, Weiskittel US Patent No. 2,130,167 does not teach or disclose a self supporting holding part that is configured to receive a baking rack. Likewise, Christian US Patent No. 1,063,183 only discloses a rack 4 in which the baking racks are rigidly secured to vertical portions in the four corners.”

Applicant's remarks are however not commensurate with the scope of the claimed invention. That is, claim 16 does not require that the holding part (12) is “self-supporting”, nor does it preclude structure such as that shown and disclosed by Christian US Patent No. 1,063,183 wherein the holding members 30 are rigidly attached to and supported by the sliding support 18. On the contrary, applicant's claim 16 defines the holding part in no more specific terms than: 1) it receives and holds the baking rack; and 2) it includes, but is not limited to, two retaining elements each guided by a displaceable carriage mounted on a guide rails affixed to opposite side walls of the baking chamber. These limitations do not embody the principle that the holding part (12) is “self-supporting”, nor do they necessarily preclude the structure shown and disclosed by Christian US Patent No. 1,063,183. That is Christian US Patent No. 1,063,183

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shows the structural and functional equivalent of the broadly claimed two retaining elements (11, 15) each guided by a displaceable carriage (18, 19) wherein each carriage is guided on a rail (20), all of which together form holding means arranged on opposite side walls. In Christian US Patent No. 1,063,183 the respective holding parts (11, 15) together selectively support baking racks (13; "grids") on any one of holding part members (6, 9; or 12), in a non-rigid fashion.



Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 fails to accurately define the claimed invention. While it can be said that the each of the guide rails is affixed “on” one of said opposite side walls it can not be said that each displaceable carriage is arranged "on" one of said opposite side walls, since each carriage is “mounted on a guide rail” (claim 16), and not “on” the side wall.

The term "middle height region" in claim 17 is a relative term which renders the claim indefinite. The term "middle height" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

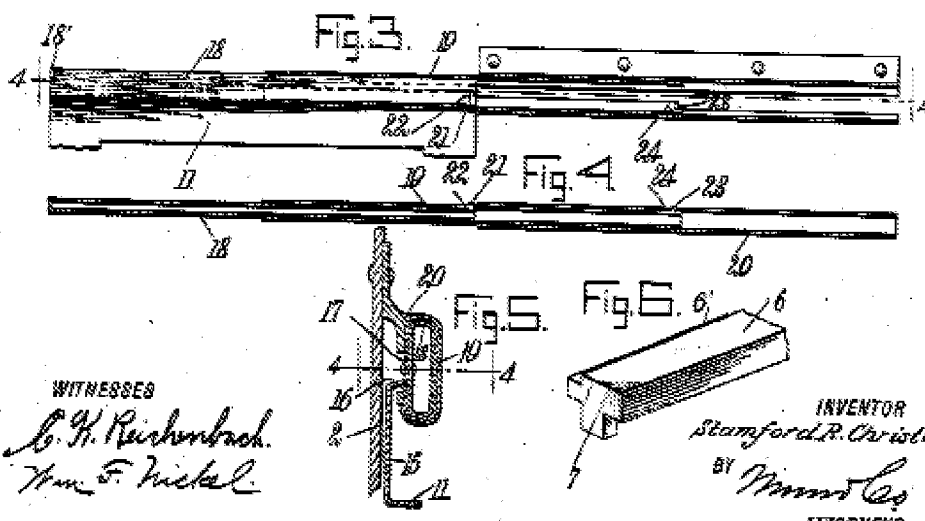
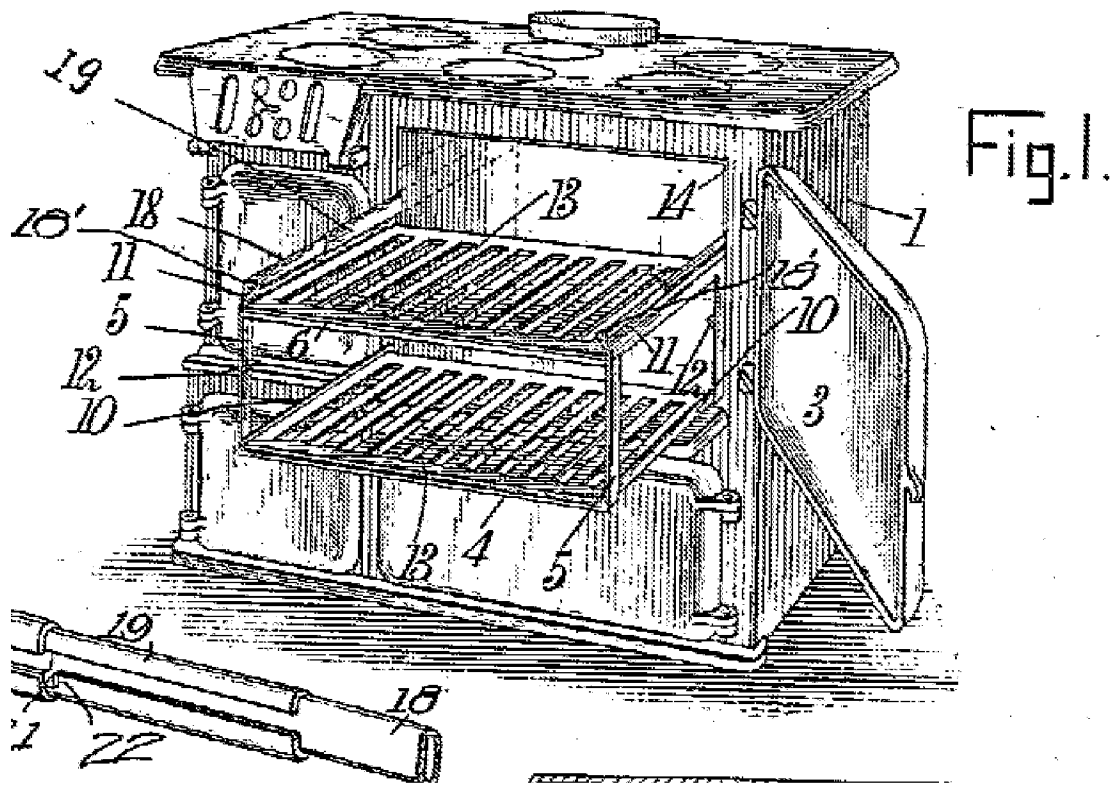
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims Rejected under 35 U.S.C. 102(b)

Claims 16, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by US 1063183 (Christian).



Regarding claims 16, 25 and 26, US 1063183 (Christian) shows (figure 3) and discloses a baking oven having:

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- a baking chamber (2);
- a baking rack (4, 6) insertable in said baking chamber;
- a holding part receiving and holding said baking rack and horizontally guided in said baking chamber;-
- wherein the holding part and said baking rack are displaceable between a baking position with said baking rack inside said baking chamber and a removed position with said baking rack located, at least in part, outside and in front of said baking chamber; and
- the holding part including two retaining elements (see figure 5; element 15, 16, 17) arranged on opposite side walls of said baking chamber and at a distance from at least one of the top wall and the bottom wall of said baking chamber;
- wherein each of the two retaining elements is guided by a displaceable carriage (18, 19);
- wherein each displaceable carriage includes a hooked rail (11) and which is affixed to on one of said opposite side walls of said baking chamber in a middle height region of said baking chamber;

The displaceable carriage (23, 35, 43, etc.) of **US 1063183 (Christian)** move along with the baking rack (6) as it is oriented in the removed position, where the baking rack positioned, at least in part, outside and in front of said baking chamber (see figure 3). Therefore, the position(s) where the displaceable carriages (23, 35, 43, etc.) of **US 1063183 (Christian)** reside when the baking rack (6) is located at the removed position (i.e. – “baking rack located, at least in part, outside and in front of said baking chamber”) is/are the same as applicant’s broadly claimed displaceable carriage “locating position”.

Regarding **claims 25 and 26**, the closed end of the track member (40, 41) necessarily form “a forward and a rear stop position” by limiting the forward and rearward movement of the displaceable carriages (23, 35, 43, etc.) of **US 1063183 (Christian)**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims 17, 18, 19, 27-31 and 36, are rejected under 35 U.S.C. 103(a) as being unpatentable over **US 1063183 (Christian)** in view of **DE 2 650 372** (of record).

US 1063183 (Christian) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the hooked rails being coupled to one another by a cross bracing;
- the hooked rail having a plurality of grooves.

DE 2 650 372 teaches, from applicant's same oven shelf field of endeavor, selectively securing cooking trays (10) supported on hooks rails (4) having grooves (6, 9) which are coupled to one another by a cross bracing (2).

ABSTRACTED-PUB-NO: FR 2650372 A

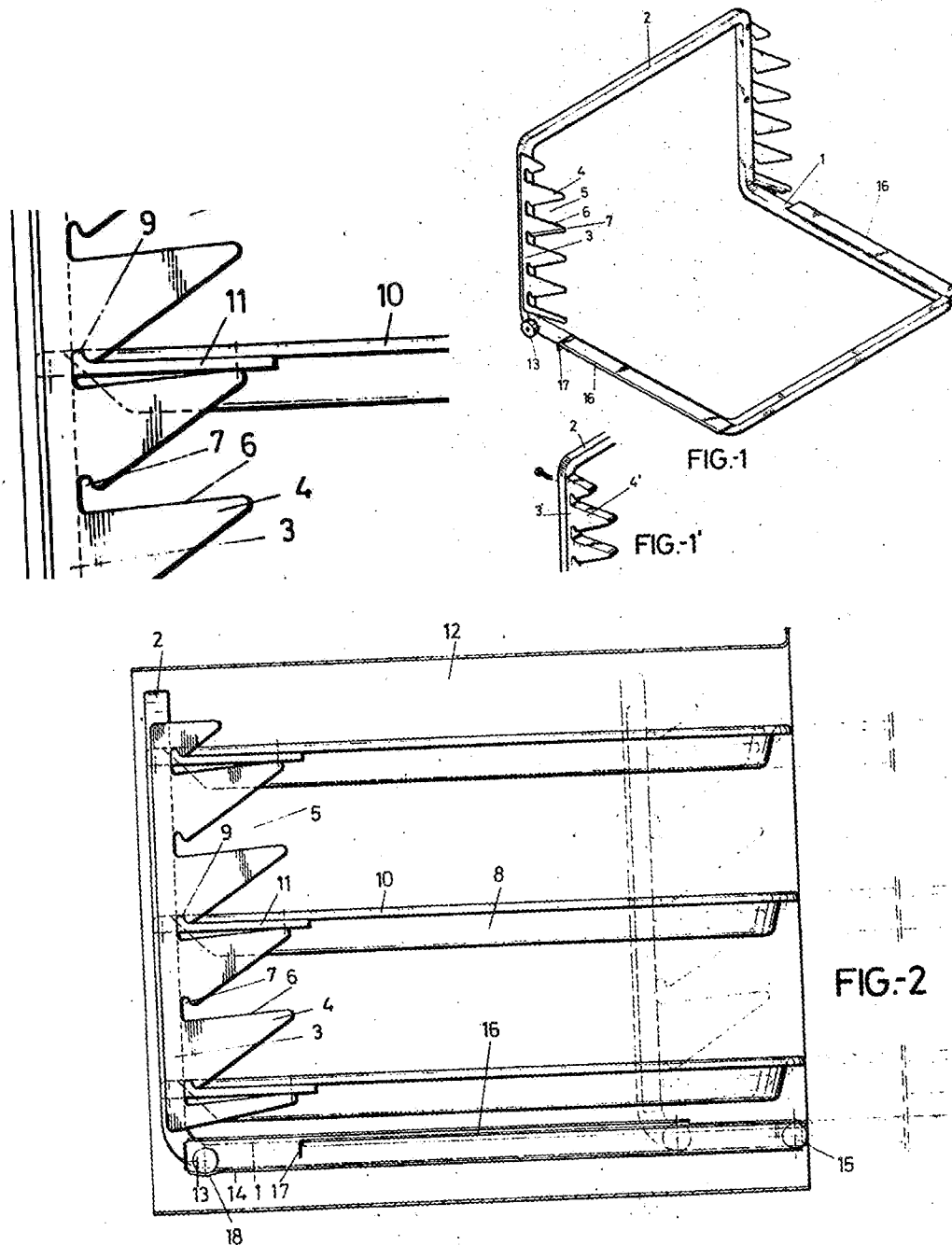
BASIC-ABSTRACT:

A kitchen oven, characterised essentially in that it consists of tray which can be displaced with the aid of guides which link suitably to the room of the oven (12).

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This tray (1, 2) has an angular form and consists in its vertical branch, with the possibility of **adjustment in height**. One or several plates (8) emerge on the door to the false door to leave this back branch.

USE/ADVANTAGE - It concerns a kitchen oven of the type which consist generally of an autonomous element integrating in line with the kitchen furniture.



In regard to **claims 17, 18, 19, 27-31 and 36**, for the purpose of providing structural stability by forming a unified frame structure, and for providing means for permitting selective vertical height adjustment and positioning of the tray, it would have been obvious to a person having ordinary skill in the art to modify the tray supports to include cross braced hooked rails having a plurality to vertically spaced grooves (claim 18) along with the already present cross bracing, in view of the teaching of **DE 2 650 372**.

In regard to **claims 17 and 29**, since the vertical height location of a baking rack assembly would necessarily depend on numerous design parameters such as the overall size of a given baking chamber, the material intended to be heated in the chamber, etc. to locate the a holding part rails and carriages in a “middle-height” region of the chamber can be viewed as nothing more than merely a matter of choice in design absent showing of any new or unexpected results produced therefrom over the prior art of record.

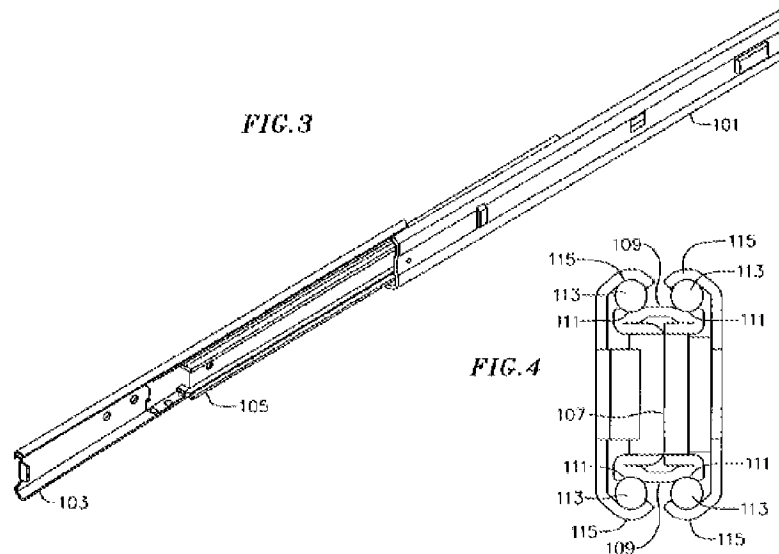
Claims Rejected under 35 U.S.C. 103(a)

Claims 21-25 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US 1063183 (Christian)** in view of **US 6938617 (Le et al)**, and supported by **US 6789861 (Dobberstein)**.

US 1063183 (Christian) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- each of the displaceable carriages is roller-mounted on one of said guide rails;
- wherein the roller-mounted on one of said guide rails by at least one roller element above and below of said guide rail;
- the displaceable carriages is roller-mounted on one of said guide rails by one of more roller element above and below of said guide rail and said roller element above said guide rail is offset laterally from said roller element below said guide rail.

US 6938617 (Le et al) teaches (figure 4), from applicant's same oven shelf field of endeavor, providing tray guide rails (115) forming displaceable carriages with as many as two upper and two lower ball bearing type roller elements for the purpose of reducing the friction between the moving parts and thereby reduce the force necessary to move the tray assembly.



US 6789861 (Dobberstein) teaches (figure 4), from applicant's same oven shelf field of endeavor, that it is known to provide telescopic guides with ball-bearings 6 (FIG. 4), and alternatively rollers or rolls 6a (FIG. 2A).

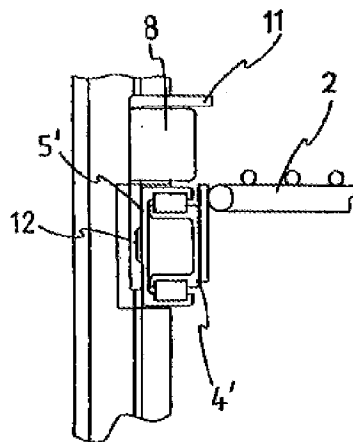


Fig. 2A

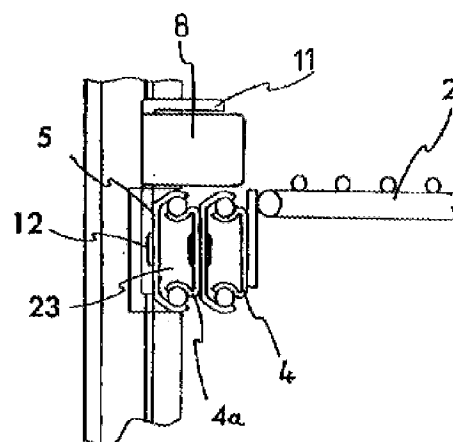


Fig. 2B

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In regard to **claims 21-25** and **32-35**, for the purpose of reducing the friction between the moving parts and thereby reduce the force necessary to move the tray assembly, it would have been obvious to a person having ordinary skill in the art to provide the **US 1063183 (Christian)** tray guide rails and therefore displaceable carriages with as many as two upper and two lower ball bearing type roller elements, in view of the teaching of **US 6938617 (Le et al)**. Further in regard to **claims 21-25** and **32-35**, it would have been obvious to a person having ordinary skill in the art to use either ball bearing or roller type bearing as a suitable alternative friction reducing means, in view of the teaching of **US 6789861 (Dobberstein)**.

Regarding **claim 33**, the closed end of the track member (40, 41) necessarily form “a forward and a rear stop position” by limiting the forward and rearward movement of the displaceable carriages (23, 35, 43, etc.) of **US 1063183 (Christian)**.

Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl D. Price whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl D. Price/

Primary Examiner, Art Unit 3749